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3. On December 23, 2019, the Commission issued a Revised¹ Notice of Filing and Hearing (“NOFH”) setting forth the procedural schedule in this matter, which providing in pertinent part as follows:

Any person who wishes to participate in this matter as a party of record should file a Petition to Intervene **in accordance with the Commission’s Rules of Practice and Procedure ...**

INSTRUCTIONS TO ALL PARTIES OF RECORDS (*Applicant, Petitioners, and Intervenors only*): **All parties of Record must prefile testimony** with the Commission and serve all Parties of Records (*sic*)...

All prefiled testimony deadlines are subject to the **information as posted on www.psc.sc.gov under Docket No. 2019-281-S.**

For the most recent information regarding this docket, including changes in the scheduled dates included in this notice, please refer to www.psc.sc.gov and Docket No. 2019-281-S.

Persons seeking information about the Commission’s Procedures should contact the Commission at 803-896-5100 or **visit its website at www.psc.sc.gov.**

(**Emphasis** in original, **emphasis** added.)

4. On January 21, 2020, Ms. Levine filed a petition to intervene in this proceeding which, by its Order No. 2020-110 issued February 5, 2020, in this docket, the Commission held in abeyance pending Ms. Levine’s correction of certain deficiencies required for her petition to comply with the Commission’s rules and regulation pertaining to intervention. Therein, the Commission ruled that “[t]his means [Ms. Levine] **must serve** other parties with all of her filings, including any **prefiled testimony.**” *Id.* (emphasis supplied.) The Commission further ruled that should Ms. Levine fail to comply, “her Petition to Intervene **will be deemed denied.**” *Id.* (emphasis supplied).

5. On February 5, 2020, Ms. Levine filed a revised petition to intervene.

6. In accordance with the NOFH, PUI pre-filed the direct testimony of its witnesses and exhibits on March 10, 2020.

¹ A revision to the originally set procedural schedule in this matter was requested by the Office of Regulatory Staff on December 18, 2019.

7. In response to Commission Order No. 2020-240, issued March 18, 2020, in the above-referenced docket (and in an unrelated docket, *i.e.*, Docket No. 2019-290-WS) relating to the declared State of Emergency in South Carolina due the COVID-19 pandemic, PUI filed a Waiver and Voluntary Stay of Deadlines under §58-5-240, including the six-month deadline within which the Commission was required to rule upon the instant application. Contemporaneously therewith, and in further recognition of the declared State of Emergency, PUI filed a separate motion for a stay of all proceedings in this matter which the Commission granted by Order No. 2020-259.

8. As contemplated by Order No. 2020-259, a “Second Revised Procedural Schedule” was ordered in this matter on April 29, 2020. *See* Order No. 2020-33H. Therein, Ms. Levine and the other parties of record were ordered to pre-file direct and exhibits on or before May 26, 2020.

9. Ms. Levine has failed to comply with the Commission’s order requiring the pre-filing of testimony and exhibits by May 26, 2020, in at least the following particulars:

- (a) Instead of complying with the Commission’s repeated instructions and orders that testimony and exhibits be pre-filed in accordance with the Commission’s rules and regulations, Ms. Levine has filed (and purported to amend) a “Pre-Hearing Brief;”
- (b) Ms. Levine’s Pre-Hearing Brief, with one exception, does not consist of “statements of fact or expressions of [her] opinion” as required by R. 103-845.C;
- (c) Order No. 2020-33H, specifically relied upon by Ms. Levine as a basis for her submission of her Pre-Hearing Brief, does not even contemplate, much less allow, the filing of a Pre-Hearing Brief by Ms. Levine or any other party of record. Under the Commission’s rules of practice and procedure, only post-hearing briefs are contemplated. *Cf.* R. 103-839 (providing for prehearing conferences and stipulations pertaining to substantive and procedural issues) and R. 103-851 (providing for post-hearing briefs or proposed orders), and
- (d) Ms. Levine’s submission of two purported amendments to her Pre-hearing Brief, even if cognizable as pre-filed testimony and exhibits (which PUI

disputes), are improper efforts to extend the pre-filing testimony dates in this matter to her benefit but to the detriment of PUI.

10. The Commission's prior instructions, orders and regulations cannot be waived in this instance as same would deny PUI the orderly procedure to which it is statutorily entitled under S.C. Code Ann. §58-3-525(A). If same are not enforced, PUI will be deprived of its right to administrative due process under S.C. Const. art. I, §22.

11. Ms. Levine's current status as an intervenor is subject to termination by the Commission under the terms of the Commission Staff letter of December 13, 2019. Moreover, her initial recognition as an intervenor does not establish that Ms. Levine will be aggrieved by the Commission's orders ruling on the merits of the Company's application and her intervention is thus subject to dismissal. *See* R. 103-804.H. In view of Ms. Levine's repeated failure to comply with the Commission orders, instructions, and rules and regulations pertaining to intervention and now pre-filed testimony and exhibits, PUI submits that her petition to intervene should now be dismissed and that she should be precluded from participation in this matter as a party of record.

12. A dismissal of Ms. Levine's intervention and the preclusion of her participation as a party of record will not prejudice Ms. Levine's rights or interests. In her revised petition to intervene, Ms. Levine states that she "will explore the technical merits, financial basis, fiduciary responsibility and other issues Palmetto Utilities has presented as the basis for the rate increase." Examined *seriatim*, it is clear that the specific issues Ms. Levine has identified are either not addressed in her filing, are improper for consideration in this docket, contravene applicable rules of procedure and evidence, and/or are already being addressed by other parties of record.

- (a) Ms. Levine does not identify any lack of "technical merit" in PUI's application. In fact, this term does not appear anywhere in her Pre-hearing Brief. So, this basis for her intervention has proven to be inaccurate.
- (b) It appears that the "financial basis" of the application to which Ms. Levine objects is
 - 1) the inclusion in rate base of the \$18 Million Dollars invested in facilities previously owned by the City of Columbia;
 - 2) the allowance of the regulatory asset approved by the Commission in its Order No. 2016-605, issued August 24, 2016, in Docket No. 2016-255-S, and included in the Company's current rates under

Commission Order No. 2018-155 issued March 7, 2018, in Docket No. 2017-228-S;

- 3) the inclusion in rate base of portions of the \$80 Million Dollars invested in plant expressly approved as used and useful in Commission Order No. 2018-155 at p. 25;
 - 4) the allowance of “operating costs” associated with the facilities acquired from the City of Columbia based upon Ms. Levine’s assertion that “statistical significance” results from her analysis of the flow rate at the Company’s Spears Creek Regional WWTP and “monthly average rainfall near” the WWTP; and
 - 5) her prayer that the Commission choose “the better option for the consumer” with respect to the rate design adopted by the Commission.
- With respect to item (1), the issue of the inclusion of the \$18 Million Dollars is not only already being challenged by ORS and the Department of Consumer Affairs, it is being challenged on her behalf and for her benefit. *See* S.C. Code Ann. §58-4-10(B) and S.C. Code Ann. §37-6-604(C). Moreover, any “evidence” in this regard would be inadmissible as it is “unduly repetitious” and only cumulative. *See* S.C. Code Ann. §1-23-330 (1), R. 103-849.A, R. 103-846, and Rule 403, SCRE. Accordingly, her interest in this regard is already being adequately represented. *Cf.* Rule 12(b)(8), SCRCF.
 - As to items (2) and (3), Ms. Levine’s Prehearing Brief effectively seeks a reversal of the Commission’s orders which have already approved the inclusion of the regulatory asset and the \$80 Million, is unsupported by any admissible evidence, and would in any event lead to improper retroactive ratemaking. *Cf.* S.C. Code Ann. §58-5-290 (2015).
 - Regarding item (4), Ms. Levine’s contention is not based upon any “fact or opinion” or personal knowledge. Rather, it is based on surmise and speculation regarding inflow and infiltration (I&I) in facilities acquired from the City of Columbia which culminates in the revealing assertion that “[i]f there is I/I above accepted industry operating standards and practices the Commission should consider whether PUI needs to assess the impact” of it on the Company’s expenses and operating margin. Her citation to a third-party report in her Pre-Hearing Brief is also inadmissible hearsay. This “evidence” would therefore

plainly be inadmissible at a hearing in this matter. *See* R.103-846, Rules 401-403, 602, and 802 SCRE, and *Daufuskie Island Utility Company, Inc. v. South Carolina Office of Regulatory Staff*, 420 S.C. 305, 803 S.E.2d 280 (2017) (holding that “speculative” evidence is inadmissible). In addition, this speculation is contradicted by evidence which is proposed to be admitted into the record by the state agency charged with inspecting PUI’s plant for excessive I&I (ORS) which, along with the Consumer Advocate, also already adequately represents Ms. Levine’s interests in this matter.

- Finally, as to item (5), Ms. Levine implicitly asserts that her water consumption is lower than the 6,000 gallons per day assumed by PUI. However, she candidly admits that while being “the only person living in [her] house,” she is “not on a fixed income.” Thus, she acknowledges that the effect of the current flat rate design “is not overly onerous” for her, but states that it may be for others in different circumstances and if the ranges [of difference] increases drastically or rapidly.” Thus, the only fact advanced by Ms. Levine is her implicit assertion that she uses less water than 6,000 gallons per month. Whether accurate or not, this is merely cumulative evidence as the Commission may take note from testimony already received from customers in this docket that PUI has customers whose water consumption is lower than average. The Company, as it stated at the Town Hall meetings referenced in Ms. Levine’s Pre-hearing Brief, is willing to consider a usage sensitive rate design and to perform the study recommended by ORS. Accordingly, Ms. Levine’s “testimony” in this regard is only cumulative and duplicative.

- (c) As a matter of law, PUI does not have any “fiduciary responsibility” toward Ms. Levine² and she asserts none in her Pre-hearing Brief. In fact, this term also does not appear anywhere in her Pre-hearing Brief.

² A ‘fiduciary relationship’ is founded on trust and confidence reposed by one person in the integrity and fidelity of another.” *Steele v. Victory Sav. Bank*, 295 S.C. 290, 293, 368 S.E.2d 91, 93 (Ct.App.1988). It exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. *Id*; *see also Cowburn v. Leventis*, 366 S.C. 20, 37, 619 S.E.2d 437, 447 (Ct. App. 2005) (“A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.”); *Redwend Ltd. P’ship v. Edwards*, 354 S.C. 459, 475-477, 581 S.E.2d 496, 505-06 (Ct. App. 2003) (holding that a fiduciary is built upon “trust and confidence, imposing upon [a fiduciary the] requirements of loyalty, good faith and fair dealing” and that [a fiduciary] cannot act to protect his own financial interests at the expense of the interests of the [ones reposing the confidence]”

13. Based upon the foregoing, PUI respectfully submits that Ms. Levine's petition to intervene should now be dismissed. In her revised Petition to Intervene, Ms. Levine stated that she would not "unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding." Yet, by her repeated failure to comply with the Commission's rules, regulations, instructions, and orders, and her efforts to introduce matter which is not admissible into evidence and/or is inconsistent with the representations made in her revised Petition to Intervene, she has done just that. Ms. Levine's Pre-Hearing Brief does not conform to the Commission's rules, regulations, instructions and orders in this matter and her continued participation in this matter as a party of record based on that submission is therefore improper.

14. Alternatively, should the Commission not be disposed to dismiss Ms. Levine's intervention in this matter, the Commission should strike her Pre-Hearing Brief and exhibits (as revised) as being non-conforming to the Commission's rules, regulations, instructions and procedures and/or inadmissible under the rules of evidence and preclude Ms. Levine from presenting any evidence in this matter.

WHEREFORE, having fully set forth its motion, PUI requests that it, and such other and further relief as the Commission deems just and lawful, be granted.

Respectfully submitted,

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